The dilemmas of union capacity: organising the entertainment industry

Amanda Coles,
School of Culture and Communication
University of Melbourne
amanda.coles@unimelb.edu.au

Peter Fairbrother
Centre for Sustainable Organisations and Work
RMIT University
peter.fairbrother@rmit.edu.au

Abstract:
For much of the recent history of trade unionism, organisation has been the focus of debate within and about trade unions. The foundation for union organisation is the workplace, where members work and are employed. Equally, unions organise for purpose, seeking to protect members’ economic and political interests as well as promoting a more just and equitable society. To interrogate the interaction between union purpose and organization, and how that relates to union capacity in an increasingly precarious employment landscape, we examine unions in the film and television production sector. The focus is on the international film and television industry, although principle reference is to the Canadian and US labour markets as the foundation for the employment precarity in the industry. The complexity of ownership structures, work practices and employment models in the film and television production sector make it an exemplary case to draw out the contemporary challenges facing unions more generally.

Introduction
For much of the recent history of trade unionism, organisation has been the focus of debate within and about trade unions. These debates have taken place in many different settings and contexts. Although not always explicitly acknowledged, the foundation for union organisation is the workplace where members work and are employed. Equally, unions organise for purpose, seeking to protect members’ economic and political interests as well as promoting a more just and equitable society. We argue that while unions must remain anchored in the workplace, they must also frame themselves as labour market actors, both in shaping workforces (as opposed to just workplaces) as well as the political and economic landscape in which they operate.

To interrogate the interaction between union purpose and organization, and how that relates to union capacity in an increasingly precarious employment landscape, we examine unions in the film and television production sector. The reason for this focus is that the complexity of this industry, in relation to ownership, work organization and employment make it an exemplary case to draw out the challenges facing unions more generally.

The film and television production sector is routinely touted by governments and industry stakeholders as a major economic and employment driver. Film and television production is
a typical example of industrial transformation under globalization, and the challenges this presents to unions. Worldwide, the English-language production sector is characterized by the domination of a handful of a few extremely powerful global media entertainment complexes (Sony, Disney, NBCUniversal). However, under the independent production model, much of the risk is devolved down to local independent production companies, set up as single cycle corporations or ‘one-offs’ for the duration of the project (Blair, Grey, & Randle, 2001, p. 171). That risk is in turn further devolved down to the cultural workers who drive the labour-intensive production process. These labour markets are based on non-standard employment relationships characterized by employment and income insecurity, excessive overtime, contract, freelance or self-employment.

We adopt Levesque and Murray’s analysis of union capacity as the ways in which unions engage in and realise their objectives by focusing their resources and capabilities to develop their collective and representational capacities (Lévesque and Murray, 2002, 2010). We identify two key means by which film and television unions have successfully leveraged their capacity to exercise power in film and television production labour markets. First, we show how the unions in the film and television production industry (principally in Canada and the US as the major Anglo-American sites) are actively engaged in labour market regulation and workforce development. Second, unions leverage the labour market power of high profile members (internationally recognised actors and writers), to develop and reinforce union solidarity. Given that the membership profiles of these unions are marked by significant disparities in occupational status, a strong attachment to the union serves as a foundational organizing principle as well as the base for industrial action at local and international levels.

To explore these themes, the analysis is informed by a comprehensive examination of union structures, histories and processes based on primary documents from unions and relevant policy areas. To complement the documentary analysis, Coles conducted seventeen qualitative interviews with union officials and policy makers as part of her doctoral research. Details on labour market precarity in the industry is informed by the academic literature on cultural labour, in addition to Coles’ own professional experience in the independent film and television production industry.

**Profiling an international industry**

The film and television production industry is labour intensive, highly mobile and globally competitive. The U.S studio feature film production industry, for example, is embedded within a vertically integrated media complex dominated by a few multinational media enterprises. These companies exercise power at a global level. Local labour market actors, often with considerable support from governments, compete globally to attract lucrative investment from the U.S. film and television production companies. International co-productions leverage the limited capital resources of many domestic producers.

Globally there are over 300 Film Commissions operating worldwide, via public policy instruments such as direct subsidies, tax incentives and rebates designed to attract highly selective and mobile foreign film and television projects. Many countries, including Australia, Fiji, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Kenya, Malta, New Zealand, Norway, Singapore, South Africa, South Korea, Taiwan, Trinidad and Tobago and the United Kingdom, are stimulating their film and television service industries, building infrastructure and attractive tax credit structures (Ernst & Young, 2004; Randle & Culkin,
Building on the provincial labour tax credit framework that was first developed in Canada, over forty U.S. states offer generous production incentive programs (Coles, 2010).

This process of underwriting international competition is premised on relatively short-term gains. The film and television industry internationally is described as comprising ‘floating factories’, the long-term effects of which:

...typically fall short from the type of benefits realized when attracting plants, warehouses and regional office operations that have not been set up with a future dissolution pre-determined – usually, in a time frame of less than a year (Litvak & Litvak, 2006, p. 285).

The temporary nature of the economic benefits – and the jobs – ensures the competition framework remains in a process of perpetual renewal, and unevenness.

The domestic film and television production sector in countries like Canada, the UK and Australia offers an alternative source of employment to the highly unpredictable US foreign service production industry. However, the predominance of the independent production model across the US foreign service sector and domestic film and television production sectors in the Anglo-American markets ensures that precarity is a defining feature of labour markets and professional lives of workers across both sectors.

The film and television industry internationally is dominated by the independent production model as the primary form of work organization. The state plays an important role in maintaining the dominance of the independent production sector across the English-language production world. Broadcasting regulation and funding structures in countries such as Canada, UK and Australia emphasize the value of broadcasters commissioning television programming from independent production companies, rather than producing it in-house. The policy rationale for independent production is generally based on stimulating sectoral capacity building (industrial development), as well as encouraging a range of high quality programming from diverse sources (cultural development). Under the independent production model, project financers, such as US studios, or domestic broadcasters in association with smaller independent television producers, establish a legal corporation only for the basis of the project – or, in the case of television series production, on a season by season basis. The core infrastructure of the independent production sector is a highly flexible workforce of key creative, logistical, technical, manual and administrative freelancers with specialized knowledge and skills. The independent production model ensures that the freelance workforce operates in labour markets that offer an unpredictable volume of short-term contracts (from one day for daily crew, to up to 8 months on a major feature film or television series) from one year to the next. To illustrate, a 2010 report by the Conference Board of Canada for the Cultural Human Resources Council reports that 64% of survey respondents from the film and television production sector are self-employed, with only 36% of respondents reporting annual earnings of more than $50,000. Working patterns in the industry are bulimic. Workers may engage in a great deal of overtime for short periods – 48% of respondents averaged more than 40 hours a week, with 36% reporting that ‘too many working hours’ affected them to a great extent - and then face no work at all (Conference Board of Canada, 2010, p. 61).
Unions

Unions play an extended role in the development and reproduction of the highly specialized workforce that drives the film and television production process. But these unions organise and operate differently, some occupationally based (e.g. The Writers Guild of America) while others recruit from across the industry (e.g. the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada [IATSE]).

Industry-based unionism is based on organizing workers within a given sector or industry. The foundation of the strength of these unions comes from, “their capacity to unite different groups of workers within the same company, sector or location, and forestall the employers’ power to replace striking workers” (Visser, 2012, p. 131). The trademark of these unions is the negotiation of sectoral agreements with employer’s associations (Streek, 2005 in Visser, 2012, p. 139). Examples in the film and television production sector include the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE) representing over 110,000 members across Canada and the U.S. in animation, computer generated imagery, front of house, laboratory, make-up and hair, motion picture and television production, post production, projection and audio-visual, scenic artists, stagehands, television broadcast, trade show/exhibition, treasurers and ticket sellers, and wardrobe categories (IATSE 2013); Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) representing broadcasting, film, independent production, theatre and the arts, leisure and digital media workers in the United Kingdom (BECTU, 2013); and the Media, Entertainment and Arts Alliance (MEAA) with 20,000 members working in TV, radio, theatre, film, live and performing arts, public relations, advertising, book publishing & website production across Australia (MEAA, 2013).

These three unions negotiate sectoral agreements in the independent film and television production sector. They also incorporate an approach to organizing and representation that is fundamentally linked to what can be termed a craft unionism tradition. Such unionism refers to a skills-based approach to understanding collective representation, whereby the unions seek to:

...limit the supply of qualified labour, enforce training requirements, institute work practices and procedures, restrict the activities and numbers of apprentices, and provide relief to unemployed craftsmen (as) responses to the continual threat of a general over-supply of labour... (Griffin 1984, p. 44).

Indeed, IATSE refers to its categories as ‘crafts’ in the arts and cultural sector that it represents, and both BECTU and the MEAA are in practice federations of craft-based unions (in the sense of occupation and skill) that have, over time, evolved into single multi-occupational unions. A skills-based tradition is even more evident with performers’ unions, such as the Screen Actors Guild and its recent merger with the American Federation of Television and Radio Artists (SAG-AFTRA) (SAG-AFTRA 2013).

An occupational tradition underpins a global network of actors’ unions. The International Federation of Actors (FIA) has approximately 100 affiliates in more than 70 countries around the world (International Federation of Actors, 2013. FIA is also affiliated with the
International Arts and Entertainment Alliance, the global union alliance representing workers in the Arts and Entertainment sector (IAEA, 2013). It is one of three global unions that make up the IAEA, along with the International Federation of Musicians; and the Media, Entertainment and Arts Division of UNI Global Unions (UNI-MEI; IAEA, 2013).

At the national level there are a number of performers’ unions that operate under the ‘Equity’ banner around the world; this includes Canadian Actors Equity Association in Canada; Actors Equity Association in the US; Equity UK; and Australia Actors Equity, now under the MEAA. This aspect of trade unionism is even further evident in so far as the jurisdiction of some performers’ unions is tied to the nature of the work, as delineated by whether it is a live performance (Actors Equity) or recorded media (SAG-AFTRA).

**Unions and Labour Markets**

Film and television production unions, particularly in North American labour markets, play an extended role as labour market actors, reproducing and regulating film and television workforces, as well as representing members in the (ever changing) workplace. For instance, to address the absence of a standard employment relationship under the independent production model, unions offer a range of services to their members. In addition to negotiating and enforcing collective agreements, unions function as hiring halls to varying degrees, provide professional development and training opportunities for their members, and administer health insurance, disability, parental leave, hardship funds, employee assistance plans, retirement benefits plans, and rights management for residuals.

The state also plays an important role in shaping union purposes and activities. Labour law in Australia falls under the jurisdiction of the Commonwealth, whereas in Canada it is largely a provincial matter with considerable variations in across the country. For example, the ability for unions to function legally as hiring halls and thus exercising considerable influence over access to work and the supply of labour, is shaped by the labour laws of the jurisdiction in which they operate. The lack of public health care in the United States means that health insurance is a major collective bargaining issue for American film and television unions, whereas this is less of an issue in Canada and arguably Australia.

A distinctive means by which film and television unions regulate local labour markets in a globally competitive industry is through immigration policy. For example, in Australia, all foreign cultural workers must obtain an Entertainer Visa issued by the federal Department of Immigration and Citizenship (DIAC). DIAC migration regulations require the sponsor to obtain a non-objection letter from the MEAA prior to filing their visa application. The sponsor must demonstrate to the MEAA that:

> ...the engagement of the overseas person/s will lead to greater employment of Australians in the entertainment industry than would have been the case had Australian personnel been engaged (Media Entertainment and Arts Alliance 2013a).

A similar process is in place in Canada, whereby any employer wishing to bring in a temporary foreign worker engaged in film and television production is required to
participate in consultations with Human Resources and Skills Development Canada, Citizenship and Immigration Canada, employers and appropriate unions. The purpose is:

...to ensure that job and career opportunities for Canadians will not be adversely affected by the entry of the foreign worker(s) (Canadian Media Production Association 2013).

Moreover, some national unions have taken on the responsibility (often with educational or sector partners) for the ongoing skills development of a globally competitive workforce. Such arrangements include IATSE Entertainment and Exhibition Industries Training Trust Fund and performance capture workshops, a joint venture between ACTRA Toronto and Sheridan College’s Screen Industries Research and Training Centre (SIRT) (IATSE 2013; ACTRA Toronto, 2013). This focus is tied to a rapidly changing technological landscape, and the capacity of the unions to regulate, reproduce and authoritatively represent a globally competitive professional workforce. Technological convergence, cross platform distribution, and technological innovation have radically impacted production methods, workflows and skill bases of creative, technical, logistical and administrative film and television workers. High definition video, digital video and 3D have all emerged largely over the last decade. Each development affects the entire production model from concept to delivery, impacting to varying degrees on the skill set required. Due to the rapidly emerging technological innovations in cinematic and post-production technology, professionals in the screen-based industries embark on a career of lifelong skills upgrading and professional development.

Leveraging power

Unions use the labour market power of their individual members as sources of strength in their capacity as collective actors. As Amman notes, “individuals who wish to make their careers as professional often look toward union membership as an essential step in their career path” (2002, p. 113).

In addition to leveraging power through labour market regulation, unions also turn to their memberships as key resources in exercising union capacity. Thus, unions will draw on the unusual star profile of some of their members as public union advocates and leaders. Banks (2010) details how the Writers Guild of America strategically recruited top showrunners and head writers to their negotiating committee as well as the executive board. This strategy serves two purposes: first, as a bargaining tool:

The power that successful writers held in board rooms, writers rooms and programming meetings was used by the WGA not only as a way to build awareness and visibility but also to remind the AMPTP of the creative labor it would lose every week if the writers were to strike. (Banks, 2010, p. 24)

and, second as a mobilizing tool when they take industrial action.

These practices are reinforced by the strong sense of internal solidarity that defines union membership (Lévesque and Murray, 2002 and 2010). A remarkable demonstration of global solidarity allowed performers to exercise unprecedented power in an industrial dispute on $500 million two-part feature film The Hobbit in 2010, the prequel to the hugely successful
Lord of the Rings Trilogy. On both projects, foreign actors were engaged to work on location in New Zealand under UK Actors Equity and/or Screen Actors Guild contracts, while local New Zealand cast and crew were engaged without any union protection or collective agreement. In spring 2010, after months of fruitless efforts by the New Zealand Actors Equity (NZAE) to negotiate a union contract for local performers, the NZAE, an affiliate of the MEAA, turned to their international brothers and sisters for help. In June 2010, FIA advised the production company that they had passed the first-ever International ‘Do Not Work’ order against the production, preventing FIA signatory members, including key cast members from the Screen Actors Guild in the United States, from accepting work on the production (ACTRA, 2011).

While the issuance of the ‘Do Not Work’ order speaks to the remarkable capacity of the unions to exercise power through global networks and collective action, it also reflects the limitations of a strong occupational tradition in organizing. The global union sought collective bargaining rights for local performers on the Hobbit, focusing on the performers. However, these local unions (organizing within the performers’ union internationally) failed to win the support of the other technical, logistical, creative, administrative and manual workers whose labour inputs are essential to the film production process. After a series of high level meetings between Warner Bros. executives and the New Zealand government, the New Zealand government passed legislation that clearly defined all workers in the film and television production industry as independent contractors rather than employees (McAndrew and Risak, 2012). The structural power of multinational media conglomerates clearly played a determining role in this dispute. Yet the importance of the union approach to organizing and representation should not be underplayed (see Fairbrother et al., 2013 for examples from other industries and sectors).

Conclusion

Union membership is a prerequisite to accessing what is considered decent quality freelance employment. These unions engage in a wide range of collective bargaining strategies and practices, ranging from negotiating with individual engagers (small production companies) to national producers’ associations, to bargaining with extremely powerful multinational media conglomerates. Moreover, they many national unions assist workers to undertake highly skilled and specific jobs in a rapidly changing technological landscape; they accredit and reproduce a highly flexible workforce of freelancers with tenuous ties to labour markets. In the independent production sector, where the terms of engagement may last anywhere from one day to eight months, many union assistance programs allow these precarious workers to maintain ties to labour markets and the industry over the long term. Overall, most unions play a key role in maintaining and reproducing the film and television workforce in a rapidly shifting industrial and technological landscape. They do this in a highly mobile, globally competitive industry.

Unionism in this industry illustrates four important features of contemporary unions. First, these unions drew on different traditions of unionism to organise and represent their membership. These unions have forged ways of organising and operating that bring members together who are in very different circumstances in the labour market. Second, by moving to organise through recruitment, skills acquisition, and professional recognition, these unions lay the foundation for developing solidaristic practices between union
members. Third, these unions are focused in identifying and incorporating those members in the industry who have labour market leverage. Fourth, over time these often nationally-based unions have developed strategies to promote transnational solidarity; these unions framed their concerns in industry and thereby cross-border ways. This step is reinforced by an industry that is global and a workforce that is also mobile, despite the precarity of employment relations for many. In these four ways these unions serve as exemplars and models for developing union action in global contexts.
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